

1 UNITED STATES BANKRUPTCY COURT

2 NORTHERN DISTRICT OF MISSISSIPPI

3 Case No. 11-13463-dwh

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5 In the Matter of:

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7 MARITIME COMMUNICATIONS/LAND MOBILE, LLC

8

9 Debtor.

10

11 - - - - - x

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13 United States Bankruptcy Court

14 Thad Cochran U.S. Courthouse

15 703 Hwy 145 North

16 Aberdeen, Mississippi

17

18 November 15, 2012

19 9:35 a.m.

20

21

22 B E F O R E :

23 HON. DAVID W. HOUSTON, III

24 U.S. BANKRUPTCY CHIEF JUDGE

25

1 Motion to Strike Portions of the Objection of Skytel To
2 Confirmation and Motion in Limine filed by Craig M. Geno on
3 behalf of Maritime Communications/Land Mobile, LLC

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5 First Amended Chapter 11 Plan filed by Craig M. Geno on
6 behalf of Maritime Communications/Land Mobile, LLC

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1 releases and those sorts of things in the plan that can be
2 read to not preserve them. That's our concern, Your Honor.

3 So it appears that no one is going to have a
4 problem with the order clarifying that those things are
5 preserved like the Court's past orders have done. If that's
6 the case, then that would resolve that concern of Skytel.
7 And in our objection we set forth some language that we
8 request be in the confirmation order in the alternative if
9 the Court chooses to confirm it. That is either identical
10 or very similar to the past language that's been in this
11 Court's orders. And we would for that -- for the reason of
12 the releases and broad exculpatory clause language that I
13 mentioned, we would request that that sort of language be in
14 this Court's order if the Court confirms the plan.

15 Thank you.

16 THE COURT: All right.

17 (Pause)

18 THE COURT: I have been making notes up here while
19 you were all giving me your summations and I worked on this
20 during the time we were out for lunch also.

21 I'm going to make the last comment at this hearing
22 about Second Thursday. I heard a lot of testimony about it.
23 Harkens of testimony of Samuel Fader (ph) formal counsel,
24 former chief counsel to the FCC who is (indiscernible)
25 qualified to testify about Second Thursday. He said there

1 were three requirements that had to be met.

2 The first was that the licensee is in bankruptcy.
3 Clearly that's the situation here.

4 Number two, the alleged -- alleged wrongdoer is
5 not participating with the transferee. That's pretty
6 undisputed as far as the proof I've heard today.

7 And number three, the alleged wrongdoer will
8 receive no benefit or only incidental benefit that would not
9 be exceeded by the benefit to the creditors who would be
10 paid by the transaction.

11 Now, there is absolutely no guarantee that Second
12 Thursday is going to be granted by the FCC. And I'm not
13 sitting up here trying to say to the FCC, you've got to
14 grant Second Thursday. That's not my function. That's the
15 function of the FCC and I said that from the time this case
16 started. I am not trying to superimpose this Court's
17 judgment on that agency.

18 The FCC may look to a lot of things such as value
19 and compare those values to the debts that are being treated
20 in this transaction. While I'm certainly not establishing a
21 value the debtor's spectrum, because as I said earlier today
22 it is a moving target that could be affected by many
23 variables. Of course one variable is the ability to be
24 treated pursuant to the Second Thursday doctrine.

25 Secondly the value could be effected by the

1 treatment of certain of these assignee entities pursuant to
2 footnote 7 in the opinion, such as Southern California
3 Regional Railway Authority. And that to me is one of the
4 most compelling factors in this entire case as to what went
5 on out there with that train wreck in California that
6 prompted congressional legislation that has now put Southern
7 California Railway Authority into the position of having to
8 do something to comply with the congressional act and it's
9 under a deadline to do so for obvious reasons of public
10 safety. To me that's one of the most compelling stories
11 that I've heard throughout the history of this case. And of
12 course the existence of the Skytel challenges at every level
13 have certainly impacted the valuation of spectrum.

14 We look to this question of windfall and you have
15 to compare it to the risk involved. I thought Mr. Reardon
16 was very candid in his testimony yesterday that when he
17 valued the spectrum from zero to perhaps \$45 million --
18 \$40- to \$45 million and then he said at a fire sale it might
19 have value of \$8- to \$10 million. Well that's clearly a
20 moving target and that's what I think that it is.

21 You look at the debt related to this value and
22 that's why when Professor Chen was testifying I looked back
23 at my own notes and I looked at the amount of debt involved.
24 You've got the secured debt that could range between -- in
25 my recollection 15- to 17 million. You've got the voting

1 unsecured creditors that voted in this case 23 million.
2 You've got the administrative claims in this case of an
3 undetermined amount right now. And then you've got as Mr.
4 Spencer just mentioned a moment ago, the cure claims.

5 So there's a lot of debt out there. If the FCC
6 wants to look at windfall then they're going to have to look
7 at all these debts too. And then when -- windfall doesn't
8 really bother me a lot. I'm not so sure there's a great
9 amount of windfall here. But I think about Choctaw and
10 their involvement in this case, there are a lot of reason
11 for them to be involved in this case.

12 Number one it's sort of self preservation at one
13 point. But they're taking a risk. And sometimes when you
14 take a risk, you expect a little may not -- no telling how
15 big the pot of gold might be at the end of the rainbow, it
16 might be little bitty, it might be good. But you're not out
17 there for philanthropic effect on the economy. You're there
18 to make a living and make money and, I mean, I understand
19 that and I think that's what makes our country go. So you
20 consider all those factors and I hope the FCC will, because
21 I'm considering them in my decision here today.

22 Look at the personal guarantee issue that's been
23 talked about a lot. Don Deprees may very well receive an
24 indirect benefit and if this transaction succeeds, this plan
25 succeeds and these creditors are paid. But who knows? I

1 haven't heard one shred of proof in the last two days as to
2 what Mr. Deprees guarantee is really worth. Is it worth \$10
3 million? I don't know. I haven't heard that.

4 But, you know, he may be off the hook, but are we
5 to choose to punish legitimate creditors just so someone
6 might not get an indirect benefit? No. I agree with the
7 witness who testified yesterday that said that's a small
8 issue. And if these creditors are paid, then they ought to
9 get paid and they certainly shouldn't be punished.

10 Issue G that was just talked about a moment ago.
11 I don't have any idea what's going to happen with that and
12 nobody else does. So we're talking about some unknowns
13 today.

14 I can't certainly say with any great degree of
15 assurance that Second Thursday is going to be granted by the
16 FCC, but the proof that has been presented to this Court in
17 this last two days that it is more likely than not, that
18 Second Thursday will be granted.

19 Footnote 7 is certainly a viable alternative,
20 particularly for Southern California Regional Railway
21 Authority and that is another reason to move this forward.

22 Feasibility. I thought the testimony of Mr.
23 Trammell yesterday was very compelling and it's somewhat
24 like a balloon that you keep inflating. You can only go so
25 far. It doesn't mean that the balloon is endless. At some

1 point it might pop. And he said he didn't want to be here
2 15 years from now and I'm sure he does not. And I'm sure
3 Choctaw doesn't want to be here 15 years from now. But the
4 testimony was undisputed that he's there, that he's not
5 going away and that he has and that Choctaw has resources to
6 make this thing go forward. So that testimony was
7 compelling. It resonated with me.

8 I look at the votes -- and that's another
9 compelling thing -- that have been presented by the tally of
10 ballots. Every class voted to accept confirmation by the
11 respected requirements of the law. That is the dollar
12 amount within the class voting and the number of creditors
13 in the class voting. When a court sees that, that's
14 certainly a motivation to confirm a plan.

15 Look at the objections that have been filed. And
16 I certainly accept the objection of -- the resolution of the
17 objection by the FCC. And I understand it and I hope that
18 you can work out the language. If you can't and you need
19 assistance I am available to help you. But I think that's a
20 job well done to get that objection resolved and contingent
21 as it may be at this moment. You resolved the other
22 objections, Alice Pipeline, the U.S. Trustee, Coserve (ph),
23 they're no longer in the courtroom with us.

24 In my opinion from what I've heard at this
25 confirmation hearing the requirements of Section 1129(a) of

1 the Bankruptcy Code have been met to my satisfaction.

2 This is not a chicken or an egg conundrum here.
3 This plan is the first step in a long pathway to making this
4 thing actually work.

5 I understand that. I understand that there are
6 some unknowns. The issue of the penalties that could come
7 out of the FCC. What's going to come out of the District
8 Court of New Jersey with the Skytel law suit there? I don't
9 know. None of us know what's going to come out of that.

10 This court reserves the right to look at that
11 depending on what happens at a later date. But that's not -
12 - it is what it is. You've created a resolution of your
13 objection that the FCC reserves these rights to do what they
14 think they need to do and that's fine. I think that's an
15 intelligent resolution of the objection and a way to go
16 forward.

17 Now, what happens in the District Court in New
18 Jersey? It is what it is. We'll just have to see. And it
19 may not be a problem at all, but I don't know that. But I
20 am of the opinion that if this plan is not confirmed and
21 confirmed today by my bench decision then everybody loses.

22 So my decision is that the plan of -- filed by the
23 debtor and proposed by -- in conjunction with Choctaw will
24 be confirmed by this Court and an order will be entered
25 accordingly.

1 Are there questions? Number one thing. The
2 objection to Skytel which is the only objection remaining is
3 overruled.

4 Any questions?

5 MR. RUHL: Quick question, Your Honor. You said
6 that you were reserving your right to look at the New Jersey
7 decision if and when that ever happens?

8 THE COURT: Yeah.

9 MR. RUHL: Does that mean -- what effect on the
10 treble damages disallowance provision (indiscernible)
11 reserve your right to (indiscernible).

12 THE COURT: Just look at it and see what happens.

13 MR. RUHL: Yes, sir. And the second thing --

14 THE COURT: It won't be me.

15 (laughter)

16 MR. RUHL: The second thing is the Court okay with
17 the same reservation of rights that we had before on the
18 Skytel proceedings like we did in the APA orders?

19 THE COURT: I just said that what happens there
20 can happen there. I'm not trying to tell the New Jersey
21 district court that they can't decide that case and do what
22 they want to do.

23 MR. RUHL: And they're FCC proceedings too, Your
24 Honor.

25 THE COURT: Exactly. I made that explicitly clear

1 I thought a moment ago.

2 MR. GENO: One question, Your Honor. We had
3 requested that the Court find that Choctaw was a good faith
4 purchaser. And I know that you didn't specifically find
5 that. We'd like --

6 THE COURT: I do now.

7 MR. GENO: Thank you. Nothing further, Your
8 Honor.

9 THE COURT: I think that Mr. Trammell's testimony
10 convinces me that they're a good faith purchaser and trying
11 to do the right thing by this.

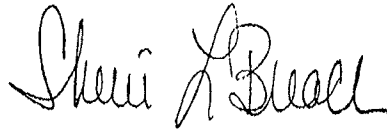
12 All right. You all are free to go. Have a great
13 weekend.

14 (Chorus of thank you.)

15 (Proceedings concluded at 3:47 p.m.)
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C E R T I F I C A T I O N

I, Sherri L. Breach, CERT*D-397, certified that the
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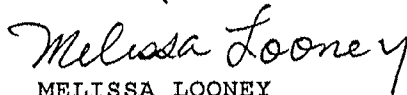


SHERRI L. BREACH

AAERT Certified Electronic Reporter & Transcriber

CERT*D -397

I, Melissa Looney, certify that the foregoing transcript is
a true and accurate record of the proceedings.



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